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ABSTRACT

This position paper of the American Federation of Teachers (AFT) addresses issues related to the discipline of students with severe behavior disorders or other disabilities. It specifically considers: (1) placement of disruptive and/or dangerous students; (2) cost issues of alternatives to suspension and expulsion; (3) legal parameters under the Individuals with Disabilities Education Act; (4) staff issues (teachers have a right not to be verbally or physically assaulted by students); and (5) minority issues (since minority students have been disproportionately represented among suspended and expelled students). The paper encourages a focus on prevention and early intervention through use of discipline codes, improved classroom management, low-level classroom interventions, and behavior specialists. It also recommends a continuum of alternative placements including in-school crisis centers, in-school suspension, and longer-term alternative settings. The paper reaffirms AFT's position favoring alternative schools. Attached is a resolution on the issue of alternative schools passed by the AFT at its 1996 Convention; an outline of prevention and intervention strategies; and guidance on the law surrounding the discipline of students with disabilities. (CR)

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SCHOOLS, DISCIPLINE, AND STUDENTS WITH DISABILITIES: THE AFT RESPONDS

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Paper prepared for the Council for Children with Behavior Disorders
for the CEC Annual Convention in Salt Lake City, April, 1997

In Monroe, Louisiana, at a public elementary school, a fifth grade student with a history of violent and aggressive behavior attacked and choked another pupil at the water fountain. When the teacher, about the same size as the student, came to assist, the student placed her foot on the teacher's foot, delivered a blow to the teacher's face, then struck a violent blow to the teacher's chest. A second teacher, the homeroom teacher of this child and 31 other students, came to assist and was kicked. When the child was being taken to the office, she attempted to push the teacher down the stairs. In the office, the child broke out again and had to be restrained by the principal. Police were called, and the child was taken away in handcuffs. The first teacher was taken to the hospital for treatment.

Something is terribly wrong here. Whatever the underlying causes for this child's outburst, one classmate and two teachers were injured; a lot of precious school time and energy were expended on this incident. The other 31 students, at a minimum, spent a lot of time thinking and talking about this incident when they should have been thinking and talking about their lessons. It is likely that this incident was the topic of conversation for most of the students in the school. And from the research we know that this kind of violent act, if it goes unchecked, spawns more violence and creates negative secondary effects in other students. Unfortunately, this shocking story is repeated daily in schools and school districts all over the country.

The AFT's Campaign to Improve America's Public Schools

The American Federation of Teachers has advocated higher academic standards in America's classrooms as an antidote to the alarming decline in the quality of education in public schools, and the concomitant decline in the public's support for those schools. Alarmed by the failure of the 1980s reforms to have any significant effect on the performance of students in the nation's schools, and troubled by the public's perception that teacher unions are the problem, the AFT concentrated resources into a drive to let the public know that the union joins them in supporting high standards, and further to inform them that the union is in the forefront of efforts to raise the level of student performance by raising the standards for what students ought to know and be able to do.

Yet even as it was calling for higher academic standards, the AFT recognized that any effort to raise academic performance has to address the problem of students who routinely disrupt their classrooms or threaten the safety of their classmates. Students who fear for their safety, or whose classrooms are continually disrupted by a few students, cannot concentrate on the lessons for the day, even when those lessons are part of a rich and challenging curriculum. Students who are continually disruptive or dangerous have an overwhelmingly negative impact on classrooms and schools. In such conditions, teachers cannot teach and students cannot learn. The AFT advocated that violent and disruptive students be removed from the classroom.

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The AFT was not alone in its recognition of this problem. A Public Agenda survey of citizens from all over the country, First Things First, revealed compelling findings: over 80 percent of the American people believe that students who disrupt the classroom and endanger the safety of their classmates must not be allowed to deprive their classmates of an education. An even higher percentage of African-Americans who were surveyed, most particularly parents, expressed these views. In addition, seventy percent of the students who responded to a third Public Agenda survey, Getting By: What American Teenagers Really Think About Their Schools, said that there are too many disruptive students in their classes, and eighty-two percent say that those youngsters should be removed from the class so that other students can learn. When asked in a separate survey what could be done to make them feel safer, the students told a Metropolitan Life survey that dangerous and disruptive students (they called them "bad") should be removed from class. They exhorted their teachers, "Watch for trouble makers." A student from Chicago complained to Public Agenda, "They just are loud and disrupting the whole class. The teacher is not able to teach."

Education is vital for all students to become independently functioning adults in an increasingly technological and demanding world economy. Education is no longer an option, but a fundamental requirement for economic viability. We cannot allow the vast majority of students -- many of whom are disabled, many of whom are minorities -- to lose their opportunity for an education in order to "protect" the rights of a few disruptive or violent students. The majority of students come to school prepared to learn, and they take their education seriously. Our insistence on protecting what we think are the rights of the very small percentage of students who are dangerous or disruptive, by insisting that they remain in their classrooms, is patently unfair to the rest. We have to remove students who cannot behave in spite of our best efforts, or we jeopardize the education of those who can behave.

Further, we must do everything possible to maintain the public's support for public schools. We already know that schools that open in response to voucher plans are less likely to serve the needs of disabled students. We also know that some private corporations that contract to administer public schools for a profit often realize their profit by ceasing services to disabled students. In addition, as Gordon Ambach of the Council of Chief State School Officers told the Department of Education, the public just does not believe that there should be a dual standard of behavior -- one for disabled students and one for the rest. It is absolutely essential to improve the function of public schools, including making certain that all students meet high standards of conduct, so that the public's support not only does not erode further, it begins to return to previous high levels.

ISSUES THAT MUST BE ADDRESSED

Nevertheless, there are a number of issues surrounding the need to remove students from classrooms that must be addressed effectively if we are to resolve the problems of students with behavior problems. Where should the students go? Should we suspend and expel them to the streets? The costs are very high for alternatives, and school districts are experiencing diminishing funds, particularly those that have the most persistent discipline problems. If we believe in alternatives, how do we pay for them? Students with disabilities present unique problems to resolving this issue. And some in the minority community see alternative schools as a means to segregate minority students. Let's explore these issues one at a time.

Where Should These Students Go?

When students are disruptive and/or dangerous, and are removed from one classroom, the perplexing question immediately arises -- "What do we do with them?" If we suspend or expel them, it is unlikely that they will have any effective supervision. The short term result likely will be that daytime crime in the community probably will rise. In fact, some police reports from various large cities suggest that truant, suspended and expelled students can account for as much as 90% of daytime street crime. Other students, school staff, and school families are often the victims of those crimes. Our hard-pressed neighborhoods surely are. The long term result is that the excluded students, already far behind in their schoolwork, will have no education, no positive behavior models, and no opportunities to learn how to conduct themselves in society. The most likely long term outcomes for these students will be dropping out, unemployment, a life of crime, more victims, and eventual incarceration. "When we follow the former school bully to age twenty-three, we find a four-fold increase in criminal behavior," writes Dan Olweus, from the University of Bergen, Norway. A grim scenario indeed, particularly when it is multiplied by the large numbers of schools all over the country whose educational environments are daily threatened by such students. Grim as well when we consider the social and financial costs of crime, including trauma to victims, billions of dollars in physical and property damage to citizens, and the annual costs for incarceration that range from an average of $14,000 in local jails to an average of $23,000 in federal jails.

The answer we propose is a system of high quality alternative settings that are organized to provide support to district instructional programs while still responding to the educational and behavioral deficits of dangerous and disruptive students.

Cost Issues

The problem is that alternatives to suspension and expulsion -- separate classrooms and schools that provide supervision -- require extra resources. Further, if those classrooms and alternative schools are to have any lasting effect on these students to prevent the grim scenario presented above, intensive human and financial resources are required. Students with serious behavior problems usually come to school with chronic and profound personal and social problems that are not easily addressed. Counseling and emotional therapy, social services, highly trained staff, family supports, small classrooms, regimens to teach new behaviors, and extra personnel for security purposes must be provided. These resources cost a great deal of money; money that is not easily available to schools in today's environment of public cost-cutting. We know that turning these students around prevents more costly interventions later, but the costs for adult interventions come from one budget and the costs for school interventions come from another. This serious issue must be resolved.

Oklahoma has taken an important step in resolving the problem by setting up state grants to assist local districts in supporting quality alternatives. The Oklahoma law takes the additional step of providing a technical assistance center that works with alternatives to train staff and make certain that the program requirements of the law are being met. More states and the federal government need to provide financial assistance to local districts with serious behavior and money problems. In addition, local districts can work with community agencies to provide services, resources, and facilities for working with students. However, the mission of these efforts must be two-fold -- **they must support the development of alternative programs that allow teachers to teach in safe and orderly classrooms, even as they support efforts to address the personal**

problems of students with behavior problems. The needs of ALL children to learn and be prepared for productive adulthood must be addressed, not just the needs of a small minority of students.

Students with Disabilities

Most of the antisocial behaviors of students with disabilities fall into the same categories as the antisocial behaviors of students without disabilities. However, there are specific requirements and restrictions that apply to these students that must be addressed in any discussion about the issues raised by antisocial students.

Legal Parameters

Students with disabilities receive specific protections under the Individuals with Disabilities Education Act -- also known as the IDEA -- a federal law, when they are determined to be eligible for special education. These protections extend to considerations for discipline when they are dangerous or disruptive in school. Under the present law, if a disabled student's behavior is deemed to be a manifestation of the disability -- that is, it is essentially caused, by or inextricably linked with, the disability -- the student may not be suspended from school for more than 10 days without the permission of the parents. The school district could attempt to exclude the student for more than 10 days, but if the parents appeal the school's action, the student must "stay put" in the previously assigned classroom until due process -- the chain of hearings and court challenges that is guaranteed to parents and the school district by the law -- is exhausted. This could take years.

Students who bring firearms to school may be placed in an alternative setting for up to 45 days without the parents' permission. For behavior that causes or is substantially likely to cause serious, life-threatening injury, the school district can petition the court to permit the removal the student by issuing a temporary restraining order (or TRO). However, in many cases the standard of danger is so high that many districts are denied these petitions in the face of behavior that injures others but doesn't threaten their lives. Temporary restraining orders can also be overturned in another court. In addition, other kinds of antisocial behavior such as non-firearm weapons violations, drug violations, rape and sexual harassment, and chronic serious disruption are not subject to court order. In addition, in cases of clear criminal behavior, some courts have said that schools violate students' due process rights if they call the police and the student is arrested.

To illustrate the complexity of the present "stay put" restrictions, a chart of procedures is also attached to this paper.

Scope of the Behavior

Students with disabilities are not the only students who are dangerous and/or disruptive. There are no clear data that demonstrate that they have behavior problems disproportionate to their numbers in the total population of students, although there is some preliminary data from New York, Delaware, and Milwaukee that suggest that disabled students might participate in more violent acts than their numbers would suggest. Nevertheless, the application of IDEA and court cases dealing with discipline issues have created a chilling effect on school districts. The convoluted and ambiguous guidelines, lenient and overly broad interpretations of what constitutes a manifestation, and expensive, time consuming requirements, in addition to the stiff punishments for districts that accompany losses in court when the discipline of disabled students is disputed by

parents, make school districts think twice before they start on the road to resolving a problem created by a student with a disability who presents a behavior problem. The resultant doubt and uncertainty make districts hesitant to act.

The effect of school and district hesitancy has a further effect. Students who experience no consequences for antisocial behavior become more daring, coming to expect that they will not be held accountable for their actions. Teachers and paraprofessionals all over the country report that students tell them they can do anything they want -- including bringing drugs and guns into school -- and nothing will happen to them. The dual standard of discipline has a corrosive effect on the classroom and the school. The victims are many:

- the rest of the students in the classroom -- disabled and non-disabled alike -- who are deprived of a safe and orderly classroom and the opportunity to learn. In fact we know that disabled students suffer more than non-disabled students from interruptions to their education.;
- the teacher who feels helpless to act and is unable to teach; and
- disabled students who are violent or disruptive, because they are not being held accountable for their actions, not participating in the educational program, and therefore not being prepared for adult life.

If we multiply this by the many classrooms around the country that are struggling with this situation, we see a significant problem that must be addressed.

There are no dramatic differences between the kinds of behaviors that most students with disabilities exhibit and those of non-disabled students. In some cases, disabled students truly do not understand the consequences of their behavior or are unable to control that behavior. However, there are interventions that can be effective with most students with disabilities who have behavior problems. Nevertheless, in cases of severe behavior problems, or students who do not understand the consequences of their behavior, the interventions require implementation by skilled, experienced specialists who have practiced them successfully for some time. The interventions cannot effectively be implemented by general education teachers, or in general education classrooms. General education teachers are responsible for the instruction of all of the students in the classroom, and cannot devote the amount of intense time and energy that is necessary for these interventions to be effective.

Staff Issues

Special education teachers and paraprofessionals, particularly those who work with emotionally disturbed and autistic students, are often discouraged by administrators, parents, and advocates from reporting verbal and physical assaults and injuries that are caused by their students. These beleaguered staff are told that they must expect that these students will curse at them and hurt them. Their pain is dismissed by the admonition that they should not take such behavior personally. Sometimes they are even told that somehow they are responsible for its occurrence. The effect of this mistreatment has been called "battered teacher syndrome" by union staff who work with such teachers and paraprofessionals. The staff become so defenseless against the assaults of their students that they are unable to manage their classrooms or to teach. No teacher should be told that it is their fate to be verbally or physically assaulted. Either the students should be made to be responsible for their own behavior through behavior management and consequences, or experts should be consulted to reduce the students' outbursts. If neither of these

efforts is effective, every effort should be made to place such a student in a more restrictive environment where the behavior can be contained. Teachers must not be sacrificed to one student's lack of control, and consequently lost to the remainder of the class.

Minority Issues

Another issue clouds the calls to remove dangerous and disruptive students from classes. Minority students have been disproportionately represented among suspended and expelled students, including those in alternative classrooms. This disproportion has raised alarms among many, especially the minority community, that stiff disciplinary measures unfairly target minorities -- males in particular -- and too often result in their removal from school and from educational opportunities. On the other hand, minority parents who responded to the Public Agenda survey of adults were more likely than other groups of parents to say that safe and orderly classrooms were essential for students to receive a quality education, and to favor "taking persistent troublemakers out of class so that teachers can concentrate on the kids who want to learn."

Those closest to the problem -- students, especially African-American teens -- are more likely to consider lack of order and discipline a serious problem. Forty-one percent of African-American teens and thirty-six percent of Hispanic teens told Public Agenda that disruptive students are a very serious problem at their schools. Sixty-six percent of African-American teens and fifty-eight percent of Hispanic teens (compared to 50 percent of white teens) said that persistent troublemakers should be removed from regular classrooms. Seventy-seven percent of African-American teens and seventy-four percent of Hispanic students said that students who bring guns or drugs to school should be removed permanently (compared to sixty-six percent of white teens). Minority students know that their education is important to their future, and they resent any obstacle that stands in the way of that education. The costs to minority students are very high when their learning is interrupted by dangerous and disruptive students, and we need to pay attention to their needs as well as the needs of disruptive and dangerous students.

Nevertheless, discipline codes must be fairly enforced so that parents can rest assured that discipline is not administered in an arbitrary or discriminatory way. Minority parents, parents of disabled students, along with other members of the community, must be involved in the development of the discipline codes. All families must sign onto them, and receive copies of these codes. Assistance with classroom management and prevention strategies must be available to new teachers through inservice and mentors. Early interventions must be available for students who do not respond to good classroom management strategies. There must be a comprehensive range of high quality alternative programs for all students with behavior problems.

Alternative settings, whether they are in-school suspension rooms or alternatives for serious offenders, must be organized to remedy learning deficits and to teach students to meet standards of conduct so that they can be safely returned to regular classrooms. All families must perceive that the school district is attempting to address behavior problems using prevention and early intervention strategies cooperatively, positively, and openly rather than imposing punishment arbitrarily.

COMPREHENSIVE SYSTEM

Any school system must have a comprehensive approach to developing schools where high academic achievement and high standards of conduct are the norm. This system has to be endemic

to the entire district, and subscribed to by the entire school community. Schools and communities must be prepared to provide a comprehensive system of high expectations for academic performance and student conduct, effective and enforced discipline codes, assistance in classroom management for beginning teachers, professional development that has been demonstrated as effective, a range of high-quality interventions and alternative settings with small pupil/teacher ratios and well-trained staff. Such a system is outlined at the end of this paper.

Focus on Prevention

We cannot stress enough that the main goal of schools should be to focus on prevention and early intervention before problems become serious. When destructive behavior patterns are set and pernicious in adolescents, the intensive interventions needed are expensive, and positive outcomes are extremely difficult to achieve. And for any school-based consequence to have its desired effect, the student has to have a positive connection to the school and to care about the school. Punitive measures, because they are applied to students who no longer have any concern for school rules or the social culture of the school, are generally meaningless and futile.

Prevention and Early Intervention

Discipline Codes Districts need to provide a framework of high expectations for students' academic performance and for their behavior. A discipline code must be developed by the district in consultation with teachers and paraprofessionals, parents, and some community members. The codes must clearly spell out what behavior is expected and what behavior is forbidden. The consequences for forbidden behavior must be spelled out and appropriate. The staff and parents should sign off on these codes. Enforcement must be consistent. Students must know that behavior x is correct, and that behavior y is not and will be met with consequence z, whether they are in 2d grade or 7th grade; whether they are boys or girls; whether they are white or African-American or Latino; whether they are A students or D students, whether they are disabled or non-disabled.

Improved Classroom Management Teacher education programs rarely offer instruction in classroom management. Yet all educators agree that effective classroom management is the sine qua non for being an effective teacher. Carolyn Evertson's research demonstrated that effective classroom management is absolutely essential for quality instruction. Therefore, while we need to put pressure on teacher education programs, we also have to be certain that new teachers have assistance from experienced teachers and mentors to help them learn how to manage their classrooms. We have to also make sure that professional development in classroom management is available for anyone who feels they need help. Good classroom management strategies and programs are available that are research-based and demonstrated to be effective. Classroom management can be taught. Classroom management must be taught!

Low-level Classroom Interventions. There are a number of research-validated interventions that teachers can implement in their classrooms without unduly interrupting their instructional program. Teaching appropriate social skills, modeling appropriate behavior; social and token reinforcements; etc. can be implemented to respond to low levels of antisocial behavior.

Behavior Specialists. Specially-trained, qualified people can work with teachers and implement strategies in classrooms to address students whose behavior does not respond to good classroom management and low-level interventions. These behavior specialists do a more intensive

investigation and observation of the student's history and problems, and develop programs of interventions to help students with behavior problems. With this extra help, often these students can remain in their regular classroom. We have seen how the effective Behavior Specialist Program in Toledo, Ohio has been able to maintain half of the students referred for serious behavior problems in their regular classroom. In addition, these behavior specialists can advocate for appropriate placements and services if students have to be referred for separate special education placements. This excellent program is the result of a contract negotiation between the Toledo Federation of Teachers and the Toledo Public Schools.

More Intensive Interventions

Nevertheless, while prevention and early intervention should reduce the numbers of students who must be referred or re-referred for more serious disciplinary action, they will not end the problem. In addition, classroom teachers who are responsible for whole classrooms of students cannot be expected to provide the more intensive strategies needed to remediate chronic and serious offenders. Therefore, there need to be alternative settings for these more involved students.

In-school Crisis Center. Many schools already have these, but they are generally seen as a place for kids to sit so they won't be in the way. The biggest gym teacher or the toughest non-teaching assistant is put in charge. Few schools take the approach that Tench Tilghman in Baltimore takes, that a crisis center is a support system for the classroom but needs to have a program that prepares students to return to their classroom. A highly qualified and experienced special education teacher is in charge of Tench Tilghman's Crisis Center. When students are having a bad day, they are sent to the Center. The Center manager teaches the students new social skills and provides counseling. School work continues, both in the student's classroom and in the Crisis Center. In addition, teachers don't have to be afraid that they will be seen as having control problems if they send students. If any teacher sends an inordinate number of students to the Center, the manager of the comes to work with the teacher on effective interventions.

The teachers on the staff agree that this model allows them to provide high quality instruction for their classrooms. However, the Tench Tilghman model works because the manager likes working with troubled youngsters, and is a highly-qualified special education teacher with criminal justice experience.

In-school Suspension. When kids have committed more serious violations of the discipline code, they can be suspended for a period of time without having to leave school premises. They remain warm, supervised, and responsible for doing their school work. They can also be taught replacement behaviors for the unacceptable behaviors that brought them here. Parents can be summoned and counseled with, while the students' teachers are able to continue working with the rest of the students' classmates.

Longer-term Alternative Settings. Students who commit very serious violations of the code must be placed in settings where they cannot disrupt or endanger others, and can be held in these settings for longer periods of time. These settings may be self-contained alternative classrooms in the neighborhood school, or off-campus alternatives.

School districts need comprehensive systems to provide a high quality, safe and orderly instructional program, and to change the disastrous trajectory antisocial students are on; to divert them from a path that could lead to delinquency, interpersonal violence, gang membership, and a

life of crime. Or, communities must be prepared to pay the higher future social, economic, and political costs of unremediated antisocial students -- unmanageable classrooms where no students can learn, and unemployment, welfare, crime, teenage pregnancy, drug abuse, gang activity, incarceration for students with unremediated behavior problems.

No Easy Answers

There are no easy answers to the problems presented by antisocial students. In most cases, the schools have done nothing to create these students' problems. Factors outside the control of schools have led to the initiation of these problems before the students arrive in school.. Terence Thorberry, a psychologist at the State University of New York in Albany, conducted a five-year study of violence among 4,000 youths. In his report of that study, he said, "Violence does not drop out of the sky...It is part of a long, developmental process that begins in early childhood." Yet the school, as the institution that cannot complete its assigned educational function unless it addresses the problem of antisocial behavior, finds itself in the position of having to either put offending students out on the street and exacerbate a larger social problem, provide the necessary and expensive remediation largely through its own efforts, or fail to carry out its mission of educating the students of this nation because classrooms are unsafe and disorderly.

Further, while some believe that alternatives are a "jail track," we hold that keeping students in the settings where they are failing to meet standards of conduct and achievement -- instead of insisting that they be placed in appropriate alternatives --guarantees that they will be insufficiently educated and insufficiently prepared to live within the constraints of society's laws. Lacking these important skills, they will be much more likely to end up in jail.

Nevertheless, schools should not contribute to the problems created by antisocial behavior, and they are in a position, with assistance from the community, to provide some remedies for this problem.

What is the AFT's Role in Addressing this Problem?

The AFT is anxious to participate in cooperative action with other groups who are concerned about this issue to provide guidance to states, districts, and schools for developing such comprehensive systems for addressing behavior problems. AFT responses to this problem consist of the following:

- The AFT, at its 1996 Convention, passed a resolution on the issue of alternative schools. That resolution is attached to this paper.
- We have written clear guidance to help districts develop and implement effective discipline codes, also attached here.
- We have professional development modules to assist classroom practitioners in effectively managing classrooms and in managing antisocial behavior.
- We are compiling and synthesizing the research on alternatives for students with behavior problems, developing a set of criteria for quality alternative schools, and identifying existing model alternatives.
- We have provided guidance on the law surrounding the discipline of students with disabilities, also attached here.

- We have assisted the Chesapeake Institute in its efforts to develop resource materials for classroom practitioners. These materials are designed to assist classroom practitioners in managing students with emotional and behavioral disorders, with an eye to providing better outcomes for those students.

In addition, knowing that the ability to read is key to success in school, and that school success is inextricably intertwined with meeting standards of conduct, we have developed three professional development modules to help teachers learn how to teach students to read. We worked closely with Reid Lyon, Benita Blachman, and NCITE to develop a module that is specifically structured to provide reading help to students at-risk. In addition, we have an extensive program to teach teachers how to teach mathematics.

We work very hard to provide support to those whose mission is to help all students reach their maximum intellectual capacity and fulfill their life dreams -- the teachers and paraprofessionals who work with students every day. Their efforts are frustrated by daily incidents of violence and disruption, and their passion for working with students is undermined by the resulting failure to reach the students they have committed themselves to teach. Unless we are all working together to support their efforts -- by providing assistance with classroom management and management of antisocial behavior, and by removing students who are disruptive and violent and placing them in settings where they can get effective help -- we are contributing to educational and economic disaster for all of our students, and the demise of our public schools.

ALTERNATIVE EDUCATION PROGRAMS FOR DANGEROUS AND/OR DISRUPTIVE STUDENTS

Adopted by the American Federation of Teachers at its National Convention, August, 1998, Cincinnati, Ohio

WHEREAS, the central mission of our nation's public schools is to prepare young people for democratic citizenship and to equip them to lead productive, responsible lives; and

WHEREAS, high standards for academic achievement, together with high expectations that students can meet them, form the essential cornerstones of any agenda to fulfill this mission; and

WHEREAS, teachers and paraprofessionals are unable to focus on learning and to assist students to achieve if student disorder and disruption continually interfere; and

WHEREAS, the very small percentage of students who are responsible for repeatedly initiating these destructive behaviors can, if tolerated, affect others but that when these students are removed from classrooms the educational program can move forward; and

WHEREAS, those students who are consistently disruptive should not remain in regular school settings but should receive alternative programs and placements that give them special help until their behavior changes, for the sake of the regular students as well as themselves. Appropriate instruction together with behavior management can help correct the problems such students have, especially when interventions are offered early; and

WHEREAS, programs for consistently dangerous and disruptive students are best implemented in small structured schools and classrooms where students can feel safe themselves as they focus on core academic subjects, receive necessary counseling and psychological services, obtain comprehensive supervision and learn from consistent consequences for anti-social behavior; and

WHEREAS, the initial costs of alternative programs may be greater than instruction in regular classrooms and neighborhood schools, these costs are far less than the costs incurred by: (1) the victims of dangerous students' acts; (2) the loss of instruction time; and (3) prisons and other forms of institutionalized care that may await students who go without assistance;

RESOLVED, that the AFT work with states, districts and schools to establish and enforce high standards for student conduct that will apply to all students so that schools can become safe and orderly places for learning; and

RESOLVED, that students who do not, for whatever reason, meet these behavior standards for safety and order be reassigned to alternative settings so that other students may learn in calm, safe environments; and

RESOLVED, that a first priority must be to establish comprehensive, quality prevention programs that identify and treat children with potential behavior problems in their earliest years when help might enable them to remain in regular classroom settings. These preschool and elementary programs could go far to forestall the development of potentially dangerous and disruptive behaviors by teaching young children to assume responsibility for their own conduct and to respect the rights of others; and

RESOLVED, that alternative programs and placements must provide students with instruction, including in core subjects, in order to enable them to meet high standards for academic achievement by remedying skill and knowledge deficits they may have, even as they learn acceptable behavior; and

RESOLVED, that a system of alternative programs and placements to cope with and correct dangerous or disruptive behaviors should cover a spectrum of needs, ranging from in-school measures such as time-out rooms, in-school suspension and heavily supervised study areas, to the use of alternative schools and corrective institutions, including those specially designed for disabled children who have behavior problems. All should provide supplementary counselling and supervision; and

RESOLVED, that use of this system should be consistent. This means that no disruptive, disorderly or dangerous student, whether disabled or not, should be allowed to remain where he or she can disturb or threaten other students; and

RESOLVED, the juvenile justice system should fund those aspects of these programs that relate to dangerous, violent or criminal behavior. Social, medical and protective services agencies should fund their contributions; and

RESOLVED, that these programs have the goal of returning students to regular schools and classrooms as soon as their behavior can meet acceptable standards and that the students in them be regularly reviewed and evaluated with that goal in mind. (1996)

DISTRICT SYSTEM FOR SETTING AND MEETING STANDARDS OF CONDUCT

PREVENTION STRATEGIES

- District commitment to high standards and student success
- Effective discipline code
    - collaboratively developed with staff, parents, and students
    - spells out expected behaviors and standards of conduct
    - spells out clear consequences for not meeting the standards of conduct
    - taught to students and formally shared with parents
    - establishes the school as a supportive learning environment
- Consistent enforcement
- Effective communication among administration, staff and parents
- Improved classroom management and instructional practice

INTERVENTION STRATEGIES

- Range of interventions and settings:
    - Low level classroom interventions
        - teaching social skills and other replacement behaviors
        - behavior enhancement and reduction strategies
        - peer mediation and conflict resolution
    - Behavior management specialists
    - In-school crisis centers (short duration)
    - In-school suspension rooms (medium duration)
    - Long-term alternative classrooms
    - Short-term off-campus alternatives (for 10-20 day suspensions)
    - Long-term off campus alternatives (for chronic and violent offenders)
    - Comprehensive evaluations of student problems
- School-wide safety plan
    - Crisis-management plan
    - Gang identification and control
- Cooperation with community agencies
    - Juvenile justice
    - Family services
    - Mental health services
    - Other social service agencies

DISCIPLINE OF STUDENTS WITH DISABILITIES: AN OVERVIEW

Prepared by Elizabeth A. Truly, Senior Counsel
New York State United Teachers
for
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INTRODUCTION

The California Superintendent of Public Instruction argued to the United States Supreme Court in Honig v. Doe, 484 U.S. 305 (1988) that "Congress could not have intended the stay-put provision [in the Education of the Handicapped Act] to be read literally, for such a construction leads to the clearly unintended, and untenable, result that school districts must return violent or dangerous students to school while the often lengthy EHA [due process] proceedings run their course." Id. at 323. The Court did not agree. It held that "Congress very much meant to strip schools of the *unilateral* authority they had traditionally employed to exclude disabled students, particularly emotionally disturbed students, from school." The Court further stated: "In so doing, Congress did not leave school administrators powerless to deal with dangerous students; it did, however, deny school officials with their former right to 'self-help,' and directed that in the future the removal of disabled students could be accomplished only with the permission of the parents, or, as a last resort, the courts." Id. at 323-24.

This memo will briefly describe the constraints on discipline of students with disabilities that have developed as a result of the Honig decision and the availability of a judicial remedy for the temporary removal or interim placement of violent or disruptive students. This memo will also discuss recent federal legislation concerning discipline of students who bring weapons to school.

LEGAL CONSTRAINTS[1]

Neither the Individuals with Disabilities Education Act nor Section 504 of the Rehabilitation Act[2] directly address the subject of student discipline. However, the agencies responsible for

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[1]Students with disabilities, like their general education counterparts, have certain due process protections in connection with the disciplinary process. See, Goss v. Lopez, 419 U.S. 565 (1975). In most states, these protections are embodied in state law and regulations. The procedures and protections connected with the disciplinary process are separate and apart from the procedures and protections that arise from federal and state laws and regulations governing the education of students with disabilities. This memo will focus only on the latter.

[2] All students with disabilities covered by IDEA are also protected by Section 504. There are, however, Section 504 students who are not IDEA eligible. The disciplinary rules for "pure" Section 504 students differ in some respects from the rules that apply to IDEA eligible students. This memo focuses exclusively on disciplinary principles applicable to IDEA eligible students.

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enforcing these statutes, i.e., the U.S. Department of Education's Office of Special Education Programs and Office of Civil Rights, have concluded that the suspension or expulsion of a student with disabilities for a period of more than ten days' duration constitutes a change in placement which triggers the procedures and protections of IDEA and its implementing regulations. Letter to Taylor, 20 IDELR 542 (1993); Letter to Fields, 211 EHLR 437 (1987); Memorandum to OCR Senior Staff Re: Long-Term Suspension or Expulsion of Handicapped Students, U. S. Department of Education, Office of Civil Rights, October 28, 1988. The major significance of Honig is the Court's approval of the OSEP and OCR determinations.

When a school district recommends or takes any action that effectively results in a change in placement for a disabled student, parents have the opportunity to request an impartial due process hearing, to seek state review of the findings and decision rendered, and, if not satisfied with the result of the state review process, to bring a civil action in state or federal court. 20 U.S.C. §1415. Of critical significance in the context of student discipline, federal law gives parents "pendency placement" or "stay put" rights requiring the school district to maintain the disabled student in the then current educational placement until all review proceedings have been completed. 20 U.S.C. §1415(e)(3).[3] The district and the parents can agree to an interim placement, but without consent of the student's parent or guardian or a court order the district cannot place the child in what it believes to be a more appropriate program.

Under existing law and regulations, removal of a student with disabilities from his or her current program for 10 consecutive school days or less does not constitute a change in placement. However, a school district may not impose a series of suspensions each less than 10 days in duration if the suspensions create a "pattern of exclusions that constitutes a 'significant change in placement.'" Memorandum to OCR Senior Staff Re: Long-Term Suspension or Expulsion of Handicapped Students, supra.

Contrary to popular belief, OCR has not adopted a bright line test with respect to multiple suspensions totaling more than 10 days during the school year. Rather, the determination of whether a series of suspensions creates a pattern of exclusions is made on a case-by-case basis based on the following considerations: the length of each suspension, the proximity of suspensions to one another, and the total amount of time the child is excluded from school. Id. A district policy that allows suspension of special education students for up to thirty days per year is facially valid as long as procedures are in place to ensure that students are not suspended in excess of ten days without

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[3]In several recent cases, parents of non-disabled students facing long-term suspension or expulsion referred their children for special education evaluation and initiated IDEA due process proceedings in an effort to compel school districts to return their children to school. In some cases, they were successful. However, according to a recent OSEP Memorandum, unless a school district has previously identified such a student as potentially in need of special education, it is not obligated to reinstate the student's prior in-school status. While IDEA protections apply once the referral is made, the "then current placement" for a student who has not yet been determined eligible for special education services is the out-of-school suspension or expulsion. Questions and Answers on Disciplining Students with Disabilities, OSEP Memorandum 95-16, April 26, 1995.

consideration of "whether the exclusion constitutes a significant change in placement." Parents of Student W v. Puyallup School District No. 3, 31 F.3d 1489 (9th Cir. 1994). Additionally, if the student's placement is lawfully changed during the course of the school year, the ten day clock is reset. Letter to Rhys, 18 IDELR 217 (1991).

THE MANIFESTATION DETERMINATION

In order to suspend a student with disabilities for a period in excess of 10 days, the district must convene a group of individuals knowledgeable about the child, the meaning of the evaluation data, and the placement options to make a determination of whether the misconduct which is the subject of the proposed disciplinary action was a manifestation of the child's disability. Memorandum to OCR Senior Staff Re: Suspension of Handicapped Students -- Deciding Whether Misbehavior Is Caused By A Child's Handicapping Condition, U. S. Department of Education, Office of Civil Rights, November 13, 1989. This group may be composed of the same individuals responsible for making recommendations regarding special education programs and services but need not be as long as the three factors are satisfied. The determination may not be made unilaterally by one individual or by the same individuals responsible for the school's regular disciplinary procedures. S-1 v. Turlington, 635 F.2d 342, 347 (5th Cir.) cert. denied, 454 U.S. 1030 (1981).

While the courts have not been uniform in their approach to the manifestation issue, several guiding principles have emerged. The determination as to whether the student's conduct was a manifestation of his/her disabling condition must be individualized and may not be based solely on the student's disability classification. It must be based on the kind of information necessary to make a competent professional decision and it must be recent enough to afford an understanding of the child's current behavior. A finding "that the student knew the difference between right and wrong is not tantamount to a determination that his misconduct was or was not a manifestation of his handicap." S-1 v. Turlington, supra at 346. The Ninth Circuit Court of Appeals developed the following standard for evaluating manifestation issues:

> [A] handicapped child's conduct is covered by this definition only if the handicap significantly affects the child's behavior controls. Although this definition may, depending on the circumstances, include the conduct of handicapped children who possess the raw capacity to conform their behavior to prescribed standards, it does not embrace conduct that bears only an attenuated relationship to the child's handicap.

Doe v. Maher, 793 F.2d 1470, 1480, n. 8 (1986) aff'd sub nom. Honig v. Doe, 484 U.S. 305. The U. S. Department of Education's Office of Civil Rights has accepted this definition. Memorandum to Senior Staff Re: Suspension of Handicapped Students -- Deciding Whether Misbehavior Is Caused By A Child's Handicapping Condition, supra.

If the group convened to make the manifestation determination concludes that the student's behavior is a manifestation of his/her disabling condition, the district cannot impose any further suspension beyond the 10 days. In such circumstances, the student should be referred to the special education committee. The special education committee should determine whether the student's current placement is appropriate and conduct a reevaluation, if necessary. Pending completion of special education committee procedures, including any due process hearings and reviews that may be instituted by the district or the parent, the student may be placed in an interim setting with parental consent. If the parent does not consent to an interim placement, the student must remain in his/her current placement pending the outcome of the reevaluation procedures and due process proceedings unless the district believes that the student presents a danger to him/herself or others and obtains an injunction authorizing the student's removal or placement in an interim setting. Id.

If the manifestation group concludes that the student's behavior was not related to his/her disabling condition, and the student is appropriately placed, additional disciplinary options consistent with state law are available including extended suspensions. The parent, however, may contest the determination that a student's behavior is not related to his/her disabling condition in a due process hearing. Letter to Taylor, 20 IDELR 542 (1993). In such circumstances, the student's pendency placement or "stay put" rights apply and, absent parental consent to an interim placement, the student cannot be removed from his/her placement without court approval.

AVAILABILITY OF INJUNCTIVE RELIEF

While the Supreme Court in Honig declined to read a "dangerousness" exception into the "stay put" provision, it recognized that Congress had not intended for the provision operate inflexibly. In the Court's view, the primary flexibility mechanism is the ability of school districts and parents to reach an agreement regarding an interim placement. The Court, citing the Department of Education, also recognized that "'[w]hile the [child's] placement may not be changed [during the pendency of any complaint proceeding], this does not preclude the agency from using its normal procedures for dealing with children who are endangering themselves or others. 34 C.F.R. §300.513 (1987). Such procedures may include the use of study carrels, timeouts, detention, or the restriction of privileges." Id. at 325. And lastly, the Court observed that "in those cases in which the parents of a truly dangerous child adamantly refuse to permit any change in placement, the 10-day respite gives school officials an opportunity to invoke the aid of the courts under 20 U.S.C. §1415(e)(2), which empowers courts to grant any appropriate relief." Id. at 326.

An action to temporarily enjoin a dangerous disabled child may be maintained in federal district court or state court. 20 U.S.C. §1415(e)(2). Anticipating school districts' concerns about the need to exhaust time-consuming administrative remedies before seeking judicial relief, the Court said that exhaustion could be excused in exigent circumstances. Honig at 327. In actions for injunctive relief, "§1415(e)(2) [the stay-put provision] effectively creates a presumption in favor of the child's current educational placement which school officials can overcome only by showing that maintaining the child in his or her current placement is substantially likely to result in injury either to himself, or herself, or to others." Id. at 328.

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The United States Court of Appeals for the Eighth Circuit recently addressed two issues related to Honig injunctions: (1) whether a court must find that a disabled child is not only "substantially likely to cause injury" but also "truly dangerous;" and (2) whether a school district must make a reasonable accommodation of the child's disability before seeking judicial relief. Light v Parkway C-2 School District, 41 F.3d 1223, 1224 (8th Cir. 1994).

With respect to the first issue, the court held that the test "looks only to the objective likelihood of injury." Id. at 1228. The court "emphatically reject[ed] the contention [of the child's parents] that an 'injury' is inflicted only when blood is drawn or the emergency room visited." Id. at 1230. Continuing, the court said: "Bruise marks, bite marks, and poked eyes all constitute 'injuries' in the context of this analysis. More broadly, we reject the proposition that a child must first inflict serious harm before that child can be deemed substantially likely to cause injury." Id. Noting that the purpose of removal is not punishment but "maintaining a safe learning environment for all . . . students," the court further stated that the issue of the disabled child's capacity for harmful intent plays no part in the analysis. Id. at 1228.

The court addressed the reasonable accommodation issue by adopting a new test. In addition to showing that the child poses a substantial risk of injury to him or herself or others, the court said that a school district must show that it has done "all that it reasonably can do to reduce the risk that the child will cause injury." Id. The court held that this second showing was necessary to ensure that school districts fulfill their responsibility under IDEA to make available a "free appropriate public education . . . for all handicapped children" in the least restrictive environment. School districts that make "reasonable use of 'supplementary aids and services' to control the child's propensity to inflict injury" will satisfy the test. Id.[4]

THE WEAPONS EXCEPTION TO THE IDEA'S "STAY PUT" REQUIREMENTS

Included in the Improving America's Schools Act of 1994, last year's reauthorization of the federal Elementary and Secondary Education Act, is an amendment to the IDEA's "stay put" requirements. The amendment to IDEA states that "if . . . a child with a disability . . . is determined

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[4]While the decision in Light is only binding within the 8th Circuit, courts in other jurisdictions have considered school district efforts to accommodate a child's disabilities in ruling on applications for injunctive relief. Also, in this case the parties agreed that the child's behavior was related to her disability. Logically, the second test should not apply in situations where the disabled child's dangerous behavior is properly determined to be unrelated to the child's disability. However, at least one court has applied the test in such circumstances to deny injunctive relief. See, J.B. v. Independent School District No. 191, Burnsville, Minnesota, ____F.Supp.___, 21 IDELR 1157 (D.Minn. 3rd Div. 1995)

to have brought a weapon[3] to school . . . , then the child may be placed in an interim alternative educational setting, in accordance with state law, for not more than 45 days." The interim alternative educational setting is decided by the IEP team. The law further states that "if a parent or guardian of a child [who is determined to have brought a weapon to school] . . . requests a due process hearing . . . , then the child shall remain in the alternative educational setting . . . during the pendency of any [such] proceedings . . . , unless the parents and the local educational agency agree otherwise." The IDEA amendment became effective on October 20, 1994. The amendment will continue in effect until an Act is passed reauthorizing the IDEA.

This new legislation was enacted to harmonize IDEA's "stay put" requirements with the requirements of the federal Gun Free Schools Act of 1994.[4] The GFSA requires states receiving funds under the Improving America's Schools Act to have in effect a law requiring school districts to expel from school for a period of not less than one year a student who is determined to have brought a weapon to school. The state law must allow the chief administering officer, i.e., the superintendent, to modify the expulsion requirement on a case-by-case basis. The GFSA further prohibits school districts from receiving funds under the Improving America's Schools Act unless they

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[3]For purposes of this section, the term "weapon" means a firearm as such term is described in Section 921 of Title 18 of the United States Code.

[4]Two pieces of gun-free schools legislation were passed by Congress and signed into law in 1994. Both are titled "Gun-Free Schools Act of 1994." The text of this memo discusses the requirements of the second and more recent Gun Free Schools Act of 1994.

The first GFSA of 1994 was signed into law on March 31, 1994 as part of the Goals 2000 legislative package. This law required school districts to adopt "polic[ies] requiring the expulsion from school for a period of not less than one year of any student who is determined to have brought a weapon to school" as a condition for receipt of federal ESEA funds. The law further provided that the policy could allow the district's "chief administering officer" to modify the expulsion requirement on a case-by-case basis. The first GFSA of 1994 had limited applicability to disabled students because of the "stay put" requirements of IDEA and the Honig decision.

The second GFSA of 1994 was signed into law on October 20, 1994 as part of the Improving America's Schools package. Among other things, the Improving America's Schools legislation reauthorizes the Elementary and Secondary Schools Act. The second GFSA is similar, but not identical to the first. It differs in that it imposes an obligation on the state to amend state law to require the expulsion of students who bring weapons to schools and it requires school districts to have policies requiring referral of students who bring weapons to school to the criminal or juvenile justice system. Pursuant to the recently issued guidance, states have until October 20, 1995 to enact and make effective the one year expulsion legislation.

Neither of these pieces of legislation is affected by the U.S. Supreme Court decision in U.S. v. Lopez, 131 U.S. 626 (1995) striking down the Gun Free School Zones Act of 1990.

have a policy requiring referral to the criminal justice or juvenile delinquency system of any student who brings a firearm or weapon to a school.

On April 26, 1995 the Office of Special Education Programs clarified several key issues regarding the IDEA amendment in Questions and Answers on Disciplining Students with Disabilities, OSEP Memorandum 95-16. According to OSEP, if a student with a disability brings a firearm to school, the district may immediately remove the student from school for up to ten school days. During the ten day period, the district should convene the IEP team to determine an appropriate interim alternative educational placement and place the student in that setting. The next step is the manifestation determination process. If the manifestation determination group determines that the bringing of a firearm to school *was not* a manifestation of the student's disability, the disabled student may be expelled for not less that one year in accordance with the Gun Free Schools Act unless the district's "chief administering officer" has exercised authority on a case-by-case basis to modify the expulsion. However, educational services must continue during the expulsion period. If the manifestation determination group determines that the bringing of a firearm *was* a manifestation of the student's disability, the student may remain in the alternative setting for up to 45 calendar days.

If the student's parents initiate a due process proceeding to challenge the interim alternative educational placement or the placement that the school district proposes to follow the alternative placement, the student must remain in the alternative educational setting during such review proceedings unless the parties agree on another placement. In these circumstances, the student could remain in the interim alternative educational setting for more than 45 days.

SERVICES TO STUDENTS WITH DISABILITIES DURING PERIODS OF SUSPENSION

The Office of Special Education Programs has ruled that it is impermissible to cease provision of educational services to students with disabilities during periods of suspension resulting from misbehavior that is not related to the student's disabling condition. Letter to New, 213 EHLR 258 (1989), Metropolitan School District of Wayne Township, Marion County, Ind. v. Davila, 969 F.2d 485 (7th Cir. 1992).[7] According to the U.S. Department of Education, school districts must provide a "free appropriate public education" to such students or risk loss of federal special education funds. Letter to Hagen, 21 IDELR 997 (1994); Letter to Boggus, 20 IDELR 625 (1993). See Education Daily, Vol. 27, No. 35, p.1. While IDEA does not specify the particular setting in which such student should be served, OSEP recently opined that "[s]uch services may be provided in the home, in an alternative school, or in another setting." Questions and Answers on Disciplining Students with Disabilities, OPEP Memorandum 95-16, April 26, 1995.

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[7]Some states require local school districts to furnish appropriate alternative instruction to students of compulsory attendance age who have been suspended or expelled from general education programs. States that do not place this responsibility on local school districts may make such services available through regional programs.

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